

REMARKS/ARGUMENTS

Applicant has complied with the revised amendment practice effective 30 July 2003, as can be discerned from inspection of the above-copied claims. Thus, applicant believes that §1 of the Office Action has been satisfactorily addressed.

The description of Fig. 1 has been amended in the specification to properly reflect that it is a cross-section side elevation view of a colostomy appliance. Applicant respectfully disagrees with the Examiner that this figure should be labeled "Prior Art" in that it provides only a frame of reference for use of the various embodiments of the invention. If the figure were to also illustrate a colostomy appliance, then the Examiner's position would have merit. However, the designation "Prior Art" implies a nexus to the claimed invention regarding issues of patentability rather than context, which is applicant's intention. See also, Figure 2 of US 5,843,054 wherein an ostomy bag is shown without designation as "Prior Art". If the Examiner can point to authority for her position, then applicant will readily comply with the request for correction.

To the extent not in conflict with applicant's position in the preceding paragraph, applicant acknowledges the Examiner's objections and has complied with the suggested changes in her §4 and §5.

The objections to the claim language set forth in §§6 and 7 have been addressed. Should the Examiner find applicant's amendments in this respect deficient, the undersigned believes that a telephone call could resolve any deficiencies.

With respect to the substantive rejections advanced by the Examiner, applicant believes that its amendments to the claims removes the prior art from valid consideration. The Examiner has relied upon a single prior art reference (US 5,843,054 issued to Honig, hereinafter the '054 patent) under both 35 USC §102(b) and §103(a) to

reject all pending claims. The Examiner is correct that the invention disclosed in the '054 patent is intended to address similar objectives to that of the present invention. However, the means by which such objectives are met are sufficiently different, as will be described in more detail below.

Applicant has refined the parameters concerning the opening defined by the second sheet of material in claim 1. As stated therein, the opening is only defined by the sheet itself, and no auxiliary structure. Unlike the ribbed aperture 48 in the '054 patent, the disclosed and claimed structure in applicant's invention uses no ancillary structure to form the opening. The opening is formed only from the second sheet of material without inclusion of rings, reinforcement tape or other auxiliary structure. Stitching is specifically not considered an auxiliary structure since it only operates to assist in defining the opening and is integrated into the material. In contrast, the ribbed aperture 48 of the '054 patent is clearly shown as a separate structure (see, Fig. 4), and "is constructed of a resilient member which allows it to return to its predefined shape after repeated stretching (column 2, line 66 to column 3, line 1).

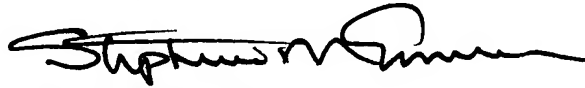
Furthermore, the required elements of claim 1 are believed to preclude the application of the prior art of record to reject this claim or any claim depending therefrom. In particular, the inclusion in claim 1 of two sheets of material having differing coefficient of friction and breathability qualities are considered important.

Applicant has complied, to the extent possible, with the Examiner's identification of informalities, objections and rejections. In particular, claim 1 has been amended to preclude the application of the '054 patent in that the claimed invention characterizes the opening as an expandable generally circular opening having a continuous perimeter and possessing no auxiliary structure. As stated previously, inclusion of stitching or similar fastening means for preserving the nature of the opening while still permitting the claimed expandability of the opening is not considered to be an auxiliary structure.

Therefore, applicant believes that the amended claim 1, and those claims dependent there from patentably define over the prior art of record, and when considered in view of applicant's compliance with the remaining matters raised in the referenced office action, allowance of this application is believed proper.

Respectfully submitted,

GRAYBEAL JACKSON HALEY, LLP

A handwritten signature in black ink, appearing to read "Stephen M. Evans", with a stylized flourish at the end.

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